

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

**GUARDIAN PROTECTION PRODUCTS,
INC.,**

Plaintiff/Counterdefendant,

v.

**G.P.P., INC. d/b/a GUARDIAN
INNOVATIVE SOLUTIONS,**

Defendant/Counter-claimant.

Case No. 1:20-cv-01680-SKO

**ORDER GRANTING
DEFENDANT/COUNTER-CLAIMANT
G.P.P., INC'S MOTION TO EXTEND
THE FACT DISCOVERY DEADLINE
TO PERMIT ADDITIONAL FACT
DISCOVERY AND TO PERMIT
DISCLOSURE UNDER THE
PROTECTIVE ORDER**

(Doc. 62)

I. INTRODUCTION

On October 17, 2024, Defendant and Counter-claimant G.P.P., Inc. (“GIS”) filed a motion to modify the pretrial scheduling order to extend the fact discovery deadline to allow additional fact discovery and to permit disclosure under—or in the alternative modify—the parties’ Stipulated Protective Order (the “Protective Order”) (Doc. 38). (Doc. 62). The Court has considered the Motion, Opposition (Doc. 67), and Reply (Doc. 68), as well as the supporting exhibits. For the reasons set forth below, the Court GRANTS GIS’s request to (1) extend the discovery deadline for the limited purposes set forth in the motion and (2) modify the Protective Order.

II. BACKGROUND

On November 24, 2020, Guardian Protection Products, Inc. (“Guardian”) filed this action against GIS seeking declaratory relief and damages stemming from an alleged breach of contract and implied covenant of good faith and fair dealing. (Doc. 1 (“Compl.”).) On February 22, 2021, GIS answered and asserted counterclaims mirroring the claims asserted by Guardian. (Doc. 7 (“Ans. & Countercl.”).) As relevant to this dispute, the claims include allegations that Guardian received information from third-party customer, American Freight, informing Guardian that GIS had failed to report warranty sales in violation of the contract between Guardian and GIS. As such, these

allegations relate to Guardian’s reason for terminating the contract—and their defense against GIS’ counterclaims (Ans. & Countercl. ¶¶ 7–15)—and the bases for damages. (Compl. ¶¶ 16–27.)

On April 15, 2021, the Court held a scheduling conference and then issued a scheduling order setting the case schedule and relevant deadlines. (Doc. 30.) The parties then filed a stipulated protective order (Doc. 37) in compliance with E.D. Cal. Local Rule 141.1, which the Court entered on August 23, 2021. (Doc. 38.) The stipulated Protective Order includes two relevant exceptions to the prohibition on disclosure to third parties:

14. The designation of any document as “CONFIDENTIAL” or “CONFIDENTIAL: ATTORNEYS’ EYES ONLY” shall not preclude any party from showing that document to any person (a) who appears as the author or as a recipient on the face of the document; (b) who has been identified by the Designating Party as having been provided with the document.

17. Nothing in this Protective Order shall limit or affect the rights of any party to use or disclose any information or thing that has not been obtained through, or derived as a result of, this action.

(Doc. 38 ¶¶ 14, 17). The Protective Order also includes a provision allowing for modification: “29. Nothing in this Protective Order shall be deemed to limit, prejudice, or waive any right of any party or person . . . (b) to seek to modify or obtain relief from any aspect of this protective order.” (*Id.* ¶ 29)

The parties then stipulated to several modifications of the scheduling order (Docs. 40, 42, 44, 48, 50, 53, 60), which the Court entered (Docs. 41, 43, 46, 49, 51, 54, 61). The most recent stipulation to modify the scheduling order (Doc. 60), was filed one day before the instant motion. That stipulation sought an extension of the parties’ expert discovery deadline, non-dispositive motion filing deadline, and non-dispositive motion hearing, but did not seek reopening of fact discovery.

In the instant motion, GIS seeks reopening of the fact discovery for three limited purposes:

1. Obtaining third-party discovery from OnPoint Warranty Solutions, LLC (“OnPoint”) and/or RPM International, Inc. (“RPM”) on Guardian and OnPoint’s partnership in the furniture warranty business beginning in or around January 2021, and the sale of Guardian from RPM to OnPoint in or around January 2023;

2. Serving a deposition subpoena on and taking the deposition of Johnny Green (former Vice President and General Manager of Guardian); and
3. Completing all previously served fact discovery, including with respect to obtaining information from American Freight and raising any related disputes concerning that discovery to the Court.

A. Relevant Discovery Timelines Regarding GIS’s Request to Reopen Fact Discovery

1. OnPoint Warranty Solutions, LLC & RPM International, Inc.

On May 9, 2023, approximately four months before the then-scheduled close of fact discovery, counsel for GIS emailed counsel for Guardian stating “[w]e saw in the news recently that Guardian was purchased by OnPoint” and inquiring “[i]n light of that, is your firm staying on as counsel for Guardian in the two cases.” (Doc. 67, Ex. 2). Neither party provides evidence regarding a response from Guardian.

On August 13, 2024, GIS served Guardian with Interrogatory No. 7—requesting “Guardian” “[i]dentify all material facts concerning Guardian’s sale of the warranty business.” (Doc. 62, Ex. F, Black Decl. ¶ 10; Doc. 67, Rudin Decl. ¶ 24). That same day, GIS served Guardian with Requests for Production Nos. 44—requesting “[a]ll documents concerning Guardian’s sale of its warranty business”—and 45—requesting “[a]ll documents concerning Guardian’s valuation of its warranty business.” (Doc. 62, Ex. G, Black Decl. ¶ 10).

On August 30, 2024, during a meet and confer between the parties, GIS raised the issue of Topic 15 as stated in GIS’ 30(b)(6) deposition notice. (Doc. 62, Black Decl. ¶ 8–9). That notice listed Topic 15 as seeking testimony regarding Guardian’s “strategies, plans, or business models relating to selling to customers based in Ohio before or after termination either directly or through a distributor other than GIS.” *Id.* During this meet and confer and a subsequent email on September 10, 2024, GIS clarified that Topic 15 included testimony about “the money made by Guardian in connection with the sale of the warranty business.” (Doc. 62, Ex. H). Guardian did not object, suggest that it would be unable to provide this information, or state that such a sale had not occurred. *Id.*

On September 12, 2024, Guardian responded to Interrogatory No. 7, objecting on various grounds and stating “None. This Responding Party did not sell its warranty business.” (Doc. 62,

1 Ex. F). This response was verified by Jed Rovin, listed as Vice President and General Manager of
2 Guardian Protection Products. *Id.* On the same day, Guardian responded to GIS' Request for
3 Production Nos. 44 and 45. (Doc. 62, Ex. G). Guardian objected to GIS' Request for Production
4 No. 44 and represented despite "a diligent search and reasonable inquiry" Guardian was "unable to
5 comply because such documents never existed." *Id.* As to Request for Production No. 45, Guardian
6 objected to the production without further comment. *Id.*

7 On September 16, 2024, Guardian confirmed that Rovin would be produced as a 30(b)(6)
8 witness competent to testify to, among other things, Topic 15. (Doc. 62, Ex. H).

9 On September 17, 2024—after the formal close of fact discovery on September 13, 2024—
10 GIS deposed Rovin, who at the time of the deposition identified himself as "Senior vice president
11 of retail at OnPoint Warranty." (Doc. 62, Ex. J). Rovin testified that RPM, Guardian's parent
12 company (Doc. 2), had "arranged for the assets to be transferred over, and Guardian -- all Guardian
13 business went with OnPoint Warranty" and more specifically stating "the service contracts, the
14 warranties, yes, that -- that did go over" (Doc. 62, Ex. J).

15 2. Johnny Green

16 On August 1, 2024, about a month and a half before the close of fact discovery, counsel for
17 Guardian reached out to counsel for GIS seeking the availability of several witnesses for deposition.
18 (Doc. 62, Ex. L).

19 On August 12, 2024, GIS informed Guardian via email that it would be seeking to depose
20 two former employees, including Johnny Green (former Vice President and General Manager), for
21 whom Guardian, in a related matter, had repeatedly accepted service. (Doc. 62, Ex. L; Doc. 67,
22 Rudin Decl. ¶ 23; Doc. 68 at 10). A little over a week later, on August 20, 2024, counsel for
23 Guardian responded stating that those employees were "no longer employed by Guardian and we
24 are not authorized to accept a deposition notice on their behalf and we do not know their availability
25 for a deposition in this matter." (Doc 62, Ex. L; Doc. 67, Rudin Decl. ¶ 26). The next day, during
26 a meet and confer, Guardian represented that they did not have contact information for either former
27 employee. (Doc. 62, Black Decl. ¶ 5; Doc 67, Rudin Decl. ¶ 26–27). Less than a week after the
28 meet and confer, on August 26, 2024, counsel for Guardian represented in an email that it was

1 looking into the last known contact information for the former employees. (Doc. 62, Ex. L, Doc.
2 62, Black Decl. ¶ 5). The next day, August 27, 2024, counsel for Guardian emailed GIS the
3 addresses it had for the former employees at the time they left Guardian's employment. (Doc. 62,
4 Ex. M).

5 On August 28, 2024, GIS provided notice to Guardian that it had subpoenaed the former
6 employees, including Johnny Green. (Doc. 62, Ex. O; Dec. 67, Rudin Decl. ¶ 26–27). GIS then
7 made several unsuccessful attempts to serve Green at his home. (Doc. 62, Black Decl. ¶ 6).

8 On August 30, 2024, GIS successfully served the other employee for a deposition scheduled
9 for September 6, 2024. (Doc. 62, Black Decl. ¶ 6). The day before the deposition was scheduled,
10 GIS cancelled the deposition due to a lack of communication from that employee confirming
11 attendance. (Doc. 62, Ex. N). Only when GIS informed Guardian that it had cancelled the
12 deposition, did Guardian alert GIS to its representation of the other former employee. *Id.* In
13 response, GIS asked Guardian to clarify whether Guardian's counsel would also be representing
14 Green in light of its prior representation that Guardian was not in contact with either former
15 employee and was not authorized to accept service on their behalf. *Id.*

16 Counsel for Guardian replied on September 9, 2024, stating that they would likely represent
17 Green upon service, but that they were not yet authorized to represent him. *Id.* As of the time the
18 present motion was filed, GIS has remained unable to serve Green and has no confirmation as to
19 whether counsel for Guardian is presently in contact with Green. (Doc. 62, Black Decl. ¶ 7).

20 On September 13, 2024, the date fact discovery closed, GIS proposed stipulating to extend
21 the fact discovery deadline to allow for other former employee's deposition after the September 6,
22 2024 deposition was cancelled and given that GIS had been unsuccessful in attempts to reschedule
23 before the deadline. (Doc. 62, Ex. C). Guardian did not agree to the stipulation, stating that it did
24 not think the original deposition should have been cancelled, but that they were nonetheless willing
25 to reschedule the deposition beyond the fact discovery deadline without formal extension and
26 revision of the case schedule. *Id.* In a later exchange that day in the same email thread, Guardian
27 clarified that it would "cooperate in good faith" to complete discovery "that has been timely served
28 by the parties." *Id.*

1 3. American Freight¹

2 On January 6, 2022, Guardian served non-party American Freight LLC with a subpoena
3 duces tecum seeking multiple requests for production. (Doc 62, Ex. Q).

4 On March 15, 2024, American Freight produced all of their responsive documents, but did
5 not produce the relevant custody documentation. (Doc. 62, Exs. S, T).

6 On August 21, 2024, during a meet and confer between the parties, GIS raised a concern that
7 Guardian had not provided GIS with a copy of any documents produced by American Freight in
8 response to Guardian's January 2022 subpoena. (Doc. 62, Black Decl. ¶ 12). That same day, GIS
9 sent its own document and deposition subpoenas to American Freight (Doc. 62, Exs. A, B) and
10 confirmed service on August 22, 2024 (Doc. 62, Black Decl. ¶ 11).

11 On August 27, 2024, GIS followed up with Guardian via email, inquiring about production
12 from American Freight; Guardian replied that it was "anticipating a supplemental production of
13 documents no later than [August 29, 2024]." (Doc. 62, Ex. M).

14 On August 30, 2024, in-house counsel for American Freight contacted GIS seeking an
15 extension to comply with GIS' August 22, 2024 subpoena. (Doc. 62, Black Decl. ¶ 11). During a
16 meet and confer between Guardian and GIS that same day, the parties agreed to grant American
17 Freight an extension through September 20, 2024, a week beyond the fact discovery deadline. (Doc.
18 62, Black Decl. ¶ 11; Doc. 67, Rudin Decl. ¶ 29). The parties further agreed that, should American
19 Freight need a further extension, an adjournment of the expert disclosure dates could be appropriate.
20 (Doc. 62, Black Decl. ¶ 11; Doc. 67, Rudin Decl. ¶ 29).

21 On the fact discovery deadline of September 13, 2024, Guardian produced to GIS what it
22 had received in production from American Freight in March 2024 as a folder of 148 native
23 spreadsheets without identification, Bates stamps, or other metadata identifying the documents
24 (Doc. 62, Black Decl. ¶ 4). That same day, GIS reached out to Guardian via email alerting Guardian
25 that American Freight had requested an extension until at least October 9, 2024, and seeking
26 Guardian's agreement to a stipulation extending the fact discovery deadline and revising the case

27 ¹ The Court finds that GIS' ability to complete the timely-served discovery as to American Freight is not at issue. *See*
28 *infra*. However, because the Court also provides a finding in the alternative as to diligence, the Court provides facts
relevant to that finding here.

1 schedule. (Doc. 62, Ex. C). Guardian replied, stating that it would not agree to a general extension
2 of the fact discovery deadline, given that it had already expressed its agreement to allow American
3 Freight additional time to comply with the subpoenas if needed without more broadly extending the
4 fact discovery deadline. *Id.*

5 On October 16, 2024, GIS reached out to Guardian via email to request another meet and
6 confer to discuss, among other things, Guardian's position with respect to extending the fact
7 discovery deadline. (Doc 62, Ex. E). At a meet an confer later that day, GIS advised Guardian that
8 it would be willing to narrow its request to reopen to the limited reopening now seeks in the present
9 motion. (Doc. 62, Black Decl. ¶ 15). Guardian refused to stipulate to the reopening of fact
10 discovery, even for limited purposes. *Id.*

11 **B. The Parties' Protective Order Dispute**

12 In addition to the request for the reopening of fact discovery, GIS also seeks a declaration
13 that they may share documents with third-party American Freight, under the terms of the stipulated
14 Protective Order, or, in the alternative, a modification of the Protective Order.

15 At a high level, GIS seeks information from American Freight regarding the warranty sales
16 Guardian claims GIS failed to report in violation of the contract between Guardian and GIS—which
17 forms the basis of Guardian's claims and defense of its termination of the contract.

18 In discovery, GIS obtained two documents labeled "GUARDIAN000001" and
19 "GUARDIAN000002" from Guardian that contain information on the "missing registrations" that
20 form the basis of Guardian's claims and defenses and are which Guardian obtained directly from
21 American Freight. (Doc. 62, Ex. T). Because of Guardian's alleged deficiencies in turning over
22 what they received in response to their subpoena of American Freight (*see supra*), GIS subpoenaed
23 American Freight directly. (Doc. 62, Exs. A, B, Black Decl. ¶ 11).

24 On August 30, 2024, in response to the August 22, 2024 subpoena, American Freight
25 requested that GIS narrow the scope of its subpoena to facilitate efficient discovery. (Doc. 62, Black
26 Decl. ¶ 11).

27 On September 23, 2023, counsel for GIS states he spoke with counsel for Guardian about
28 sharing with American Freight documents produced to GIS in discovery. (Doc. 62, Savage Decl. ¶

3). Specifically, he recalls that GIS pointed to the two documents discussed above—GUARDIAN000001 and GUARDIAN000002,² *id.*—which Guardian had disclosed to GIS no later than April 2021 and marked “CONFIDENTIAL” (Doc. 67, Rudin Decl. ¶ 6). According to counsel for GIS, counsel for Guardian represented that these documents did not need to be de-designated and could be shared with American Freight because the warranty information contained in those two documents originated with American Freight. *Id.* at ¶ 4.

On October 7, 2024, counsel for GIS reached out to counsel for Guardian via email to confirm a shared understanding that GIS could disclose two documents—GUARDIAN000001 and GUARDIAN000002—Guardian had marked “CONFIDENTIAL” to American Freight. (Doc. 62, Black Decl. ¶ 14; Savage Decl. ¶ 5). Counsel for GIS also sought confirmation that GIS could share other documents with American Freight where it was clear that American Freight otherwise had access to the information therein contained. *Id.* Counsel for Guardian responded and stated Guardian’s objection to sharing such documents with American Freight. (Doc. 62, Black Decl. ¶ 14; Savage Decl. ¶ 6).

On October 16, 2024, at the same meet and confer during which Guardian refused to stipulate to an extension of the fact discovery deadline (*see supra*), GIS also requested that Guardian change its position as to disclosure of documents to American Freight in order to facilitate efficient discovery. (Doc. 62, Black Decl. ¶ 15). Guardian refused. *Id.*

Consistent with the goal of facilitating more efficient discovery, and in part due to the alleged deficiencies in Guardian’s production of documents from American Freight to GIS (Doc. 62, Black Decl. ¶ 4), GIS now seeks to share GUARDIAN000001 and GUARDIAN000002, which Guardian marked confidential, with American Freight to narrow the focus of GIS’s August 22, 2024 subpoena.

III. LEGAL STANDARD

A. Modifying a Pretrial Scheduling Order

Generally, the Court is required to enter a pretrial scheduling order within 90 days of service of the complaint. Fed. R. Civ. P. 16(b). The scheduling order “controls the course of the action,”

² Based on representations from GIS, “[t]hese documents contain the personal information of over 44,000 end consumers, including the names and addresses of such individuals.” (Doc. 62 at 16 n.11).

1 Fed. R. Civ. P. 16(d), unless the Court modifies the order based on a showing of “good cause,” *see*
 2 Fed. R. Civ. P. 16(b)(4).

3 When evaluating whether a party has demonstrated “good cause” under Rule 16, a Court
 4 considers several factors including:

5 1) whether trial is imminent, 2) whether the request is opposed, 3) whether the
 6 non-moving party would be prejudiced, 4) whether the moving party was diligent
 7 in obtaining discovery within the guidelines established by the court, 5) the
 8 foreseeability of the need for additional discovery in light of the time allowed for
 discovery by the district court, and 6) the likelihood that the discovery will lead
 to relevant evidence.

9 *City of Pomona v. SQM N. Am. Corp.*, 866 F.3d 1060, 1066 (9th Cir. 2017) (quoting *United States*
 10 *ex rel. Schumer v. Hughes Aircraft Co.*, 63 F.3d 1512, 1526 (9th Cir. 1995), *vacated on other*
 11 *grounds*, 520 U.S. 939 (1997)); *Williams v. Rocha*, No. 1:22-CV-00095, 2024 WL 4453334, at *2
 12 (E.D. Cal. Oct. 9, 2024) (same). The fourth factor is the most important, as the primary focus of a
 13 Rule 16(b)(4) good cause inquiry “is upon the moving party’s reasons for seeking modification”
 14 and “primarily considers the diligence of the party seeking the amendment.” *Johnson v. Mammoth*
 15 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). This is especially true where a party asks for
 16 retroactive reopening of discovery rather than extension of the discovery deadline, as “a request for
 17 an extension acknowledges the importance of a deadline,” whereas a retroactive request can
 18 “suggest[] that the party paid no attention at all to the deadline.” *W. Coast Theater Corp. v. City of*
 19 *Portland*, 897 F.2d 1519, 1524 (9th Cir. 1990); *see also J.M. v. Cnty. of Stanislaus*, No.
 20 118CV01034LJOSAB, 2019 WL 6879676, at *14 (E.D. Cal. Dec. 17, 2019). Therefore, when a
 21 party has not been diligent “the inquiry should end” and the motion to modify the schedule should
 22 be denied. *Johnson*, 975 F.2d. at 609. However, where the pretrial schedule “cannot reasonably be
 23 met despite the diligence of the party seeking the extension,” Rule 16(b) grants a district court the
 24 discretion to modify the schedule. *Id.* (quoting Fed. R. Civ. P. 16 advisory committee’s notes (1983
 25 amendment)).

26 **B. Modification of a Stipulated Protective Order**

27 “Ninth Circuit precedent strongly favors disclosure to meet the needs of parties in pending
 28 litigation.” *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 475 (9th Cir. 1992). Where “the

1 protective order allows a party or a non-party producing or disclosing a particular document to
 2 initially determine whether such item is confidential without court intervention, [that] protective
 3 order is akin to a blanket protective order, which is ‘inherently subject to challenge and modification,
 4 as the party resisting disclosure generally has not made a particularized showing of good cause with
 5 respect to any individual document.’”³ *Verizon California Inc. v. Ronald A. Katz Tech. Licensing,*
 6 *L.P.*, 214 F.R.D. 583, 586 (C.D. Cal. 2003) (quoting *San Jose Mercury News, Inc. v. U.S. Dist. Ct.-*
 7 *-N. Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999)).

8 Unlike the modification of a scheduling order where the burden lies with the party seeking
 9 modification, where a party seeks to modify a stipulated protective order to permit disclosure to a
 10 third party, the party resisting disclosure carries the burden of demonstrating “good cause” as to the
 11 specific document(s) at issue. *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1131 (9th
 12 Cir. 2003). To make such a establish “good cause” the party resisting disclosure must make a
 13 showing of “specific prejudice or harm,” *Blum v. Merrill Lynch Pierce Fenner & Smith Inc.*, 712
 14 F.3d 1349, 1355 (9th Cir. 2013)—mere reliance on the protective order “will not justify a refusal to
 15 modify,” *Foltz*, 331 F.3d at 1133.

16 In this district, the local rules require parties seeking a stipulated confidentiality orders to
 17 make an initial showing of “particularized need” for protection as to *categories* of information. *See*
 18 E.D. Cal. Local Rule 141.1(c)(2). Therefore, the burden on the resisting party may be met through
 19 a demonstration that the specific document(s) at issue are within the category of information the
 20 parties previously agreed were to be protected based on their particularized showing under E.D.
 21 Local Rule 141.1(c).

22 IV. DISCUSSION

23 A. GIS Has Demonstrated Good Cause to Modify the Pretrial Scheduling Order

24 1. GIS Acted Diligently

25 The Court begins by assessing the primary consideration and dispositive factor: whether GIS
 26

27
 28 ³ Here the Protective Order in question also expressly provides for modification, although without reference to the standard by which this Court should evaluate such a request. (Doc. 38 ¶ 30).

1 was diligent.⁴ *See Johnson*, 975 F.2d at 609.

2 *a. As to RPM / OnPoint*

3 Guardian contends GIS should not be permitted to continue fact discovery as to RPM
4 and OnPoint because GIS was not diligent in seeking this discovery while fact discovery was open.
5 (Doc. 67 at 13–15). The Court disagrees.

6 It is true that GIS was aware of RPM and OnPoint as entities related to this litigation prior
7 to the close of fact discovery. There is also evidence that, based on publicly available information
8 not obtained from this litigation, counsel for GIS was aware of some type of sale of Guardian to
9 OnPoint. (Doc. 67, Ex. 2).⁵ However, the Court finds that Guardian’s responses to GIS’s
10 interrogatories and requests for production were misleading and potentially false —excusing GIS’
11 lack of further diligence.
12

13 In response to GIS’ Request for Production No. 44, which sought “[a]ll documents
14 concerning Guardian’s sale of its warranty business,” Guardian responded with various objections,
15 as well as the statement “[t]his Responding Party has made a diligent search and reasonable inquiry
16 to locate the documents responsive to this request but is unable to comply because such documents
17 never existed.” (Doc. 62, Ex. G). And in response to GIS’ Interrogatory No. 7, which sought
18 Guardian’s “[i]dentif[ication of] all material facts concerning Guardian’s sale of the warranty
19 business,” Guardian responded, “None. This Responding Party did not sell its warranty business.”
20
21

22
23 ⁴ As an initial matter, Guardian makes a broad argument that GIS was not diligent in bringing this motion. (Doc. 67 at
24 20). The Court finds that GIS’ one-month delay in bringing this motion was not unreasonable. *See Pizana v. SanMedica*
25 *Int’l LLC*, 345 F.R.D. 469, 481 (E.D. Cal. 2022) (finding that a several week delay in filing a motion to modify the
26 pretrial scheduling order); *see also Williamson on Behalf of At Home Bondholders’ Liquidating Tr. v. Google LLC*, No.
27 15-CV-00966-BLF, 2018 WL 11414604, at *3 (N.D. Cal. Feb. 28, 2018) (noting that a two month delay in filing a
28 motion to amend a scheduling order was not unreasonable in light of the parties’ attempting to negotiate a modified
schedule without court intervention); *cf. Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1087 (9th Cir. 2002) (affirming
the district court’s finding that a four-month delay in seeking amendment of a scheduling order was too long to establish
“good cause” under Rule 16(b)).

⁵ While Guardian did not update its corporate disclosure statement *as required* by Federal Rule of Civil Procedure
7.1(b)(2) to reflect the sale, GIS seems to have become aware of the sale based on public records. (Doc. 67, Ex. 2).

(Doc. 62, Ex. F).

At best, these responses are misleading.⁶ A sale did happen, and while the documents themselves may have been in the custody of RPM and/or OnPoint (as the sale occurred between the parent companies rather than by Guardian directly), material facts and documents regarding the sale of Guardian’s warranty business did exist.⁷ And GIS was diligent in seeking information about that sale. *See* (Doc. 62, Ex. H, Black Decl. ¶ 8–9 (making clear on multiple occasions that GIS sought information about the sale with respect to GIS’ 30(b)(6) depositions); Doc. 62, Ex. F (seeking information on the sale through service of interrogatories); Doc. 62, Ex. G (seeking information on the sale through service of requests for production)); *cf. Carlin v. Dairyamerica, Inc.*, No. 1:09-CV-0430 AWI EPG, 2016 WL 232315, at *5 (E.D. Cal. Jan. 20, 2016) (“the fact remains that the misrepresentation accounts for the time between the deadline established by scheduling order and the time Plaintiffs could reasonably have amended the complaint”).

Therefore, based on Guardian’s representations, GIS’ failure to seek discovery from RPM and/or OnPoint was excusable, as the need to seek such discovery was not apparent until Rovin testified after the formal close of fact discovery on September 17, 2024. Only then, for the purposes of this dispute, was GIS on notice that RPM had sold part of Guardian, including their warranty business, to OnPoint. *See* (Doc. 62, Ex. J); *cf. Centrifry Corp. v. Quest Software, Inc.*, No. C 10-

⁶ While the original discovery documents served by GIS on Guardian relating to Interrogatory No. 7 and Request for Production No. 44 are not before the Court, the Court observes that in other discovery requests by GIS that are before the Court, GIS consistently defined “Guardian” as a version of “Guardian Protection Products, Inc. and its officers, directors, employees, partners, agents, representatives, attorneys, and other personnel thereof, as well as any predecessors, subsidiaries, *corporate parents*, and affiliates, to the furthest extent the context permits.” (Doc. 62, Ex. A (emphasis added); *see also* Doc. 67, Exs. 3, 4). To the extent that discovery documents that included Interrogatory No. 7 and Request for Production No. 44 also contained that definition, Guardian’s responses would be inaccurate because a sale by “Guardian,” as defined to include “corporate parents,” did occur and documents reflecting that sale *did* exist and “Guardian” was in possession of material facts related to that sale.

⁷ To the extent that Guardian could properly impute knowledge of the sale to GIS based on discovery documents served on Guardian in a separate but related matter (Doc. 67, Exs. 3, 4), the fact that those documents may have inquired about the sale more precisely, does not relieve Guardian of the burden of responding truthfully and accurately to discovery requests in this action. Moreover, as the Court as already noted regarding the May 2023 email, the Court considers the proper focus of the dispute to be Guardian’s later misleading, and potentially contrary, representations in this litigation.

3873 CW, 2011 WL 6303362, at *2 (N.D. Cal. Dec. 16, 2011) (finding that a party was diligent despite not acting on a fact they were aware of because they were not aware of its relevance); *Carlin*, 2016 WL 232315, at *5 (finding the plaintiffs were diligent where the materiality of a witness was not discovered until after the deadline to amend occurred). Because GIS reasonably relied on Guardian’s representations in the present litigation, the Court finds GIS was not lacking in diligence as to OnPoint and RPM.

b. As to Johnny Green

Guardian’s primary argument that GIS was not diligent as to Green is that GIS “was fully aware that [Green] was a third party to these proceedings such that a subpoena would be required to obtain any discovery from him.” (Doc. 67 at 16–18). This Court is not persuaded.⁸

While this question is close, “[t]he decision to modify a scheduling order is within the broad discretion of the district court, and scheduling orders intended to facilitate the orderly progress of the litigation and alleviate case management problems.” *Ornelas v. Cate*, 1:10-cv-02366-AWI-SAB (E.D. Cal. June 12, 2024). Considering that (1) both parties reached out to the other party to schedule depositions in August 2024 ((Doc. 62, Ex. L; Doc. 67, Rudin Decl. ¶ 23); and (2) GIS had previously deposed Green and examined him on the stand at trial in a related matter, during which Guardian accepted service and was cooperative in facilitating the deposition and trial testimony (Doc. 68 at 10)—the Court is convinced that GIS was sufficiently diligent given a reasonable reliance on an established course of dealing between the parties informed by almost a decade’s worth of litigation between this case and the related matter. *See Warren v. Winco Foods, LLC*, No. 1:22-CV-00594-SAB, 2023 WL 5336816, at *14 (E.D. Cal. Aug. 18, 2023) (taking into account

⁸ While GIS focuses on Guardian’s alleged misconduct with respect to Green—informed by Guardian’s conduct with respect to the other former employee (*see* Doc. 62, Ex. L, M, N, Black Decl. ¶¶ 5–7, 12)—by GIS’ own admission, it can only provide the Court with their “susp[icion]” that Guardian is assisting Green in evading service. (Doc. 62 at 12). And, ultimately, this suspicion is not relevant to the inquiry at hand, which is on *GIS’ diligence*. *See Johnson*, 975 F.2d at 609.

parties' course of dealing); *cf. Am. Fire & Cas. Co. v. Sessions*, No. 1:24-CV-00082-CDB, 2024 WL 2209701, at *4 (E.D. Cal. May 16, 2024) ("The reasonable diligence inquiry is fact and case-specific.").

While there was a delay between when GIS initially indicated its intent to depose Green and when it began attempts to serve Green, that delay is excusable given the unexpected delays related to Guardian refusing to accept service and the more than two-week time period between when GIS told Guardian it sought to depose Green and Guardian providing their last known contact information for him. (Doc 62, Ex. L, M; Doc. 67, Rudin Decl. ¶ 26). Indeed, GIS was proactive in following up about scheduling Green's deposition before Guardian represented they would not accept service on his behalf and about Guardian's last known contact information as to Green on several occasions. (Doc. 62, Ex. M).

Given this evidence of diligence within the context of a course of dealing, combined with the weight of the other factors (*see infra*) and this Court's broad discretion to ensure the orderly progress of this litigation with an eye towards alleviating case management problems, this Court finds that GIS was sufficiently diligent.⁹

c. As to American Freight

Guardian contends that GIS was not diligent in seeking discovery from American Freight prior to the fact discovery deadline (Doc. 67, p 18–20). This contention is puzzling. GIS'

⁹ The Court observes that GIS has encountered difficulty in serving Green. The Court advises the parties that it may be willing to entertain a motion to allow substitute service via an alternative method if GIS remains unable to serve Green. *See RP Golden State Mgmt., LLC v. Ohio Sec. Ins. Co.*, No. 1:19-cv-00600-DAD-JLT, 2020 WL 4748324, at *5 (E.D. Cal. Aug. 17, 2020). The Court notes that "[c]ourts are more inclined to grant such alternative service where the serving party has provided sufficient evidence of its earlier diligence in attempting to effectuate personal service," *Fujikura Ltd. v. Finisar Corp.*, 2015 WL 5782351, at *5 (N.D. Cal. Oct. 5, 2015), or where there is evidence that the party is evading service, *cf. Ortiz v. Lucero Ag Servs., Inc.*, No. 1:23-CV-01319-JLT-EPG, 2024 WL 3029254, at *3 (E.D. Cal. June 17, 2024) ("Plaintiffs tried to serve Defendants on four prior attempts but were unsuccessful despite the attempts being during what are typically normal business hours and there being lights on at the premises. These circumstances indicate that Defendants may be evading service."). Any motion for substituted service shall be filed and heard sufficiently in filed and heard sufficiently in advance of the reopened discovery cutoff so that the Court may grant effective relief within the allotted discovery time.

diligence as to its subpoena on American Freight is only relevant to the present dispute insofar as Guardian believes there is a dispute as to whether GIS is entitled to complete discovery related to GIS' August 22, 2024 subpoena on American Freight. But GIS' entitlement to complete this discovery as to American Freight has been well-settled by the parties themselves. Indeed, Guardian has explicitly and repeatedly agreed to facilitate the completion of GIS' timely-served discovery—including the subpoena on American Freight. (Doc. 62, Ex. C). Therefore, the Court finds there is no dispute as to GIS' ability to complete discovery stemming from GIS' August 2024 subpoena of American Freight.¹⁰

2. The Other Factors Weigh in Favor of Modification

The balance of the other factors also weighs in favor of modification. The currently scheduled trial date, August 12, 2025, is not imminent relative to the limited modification requested. *Cf. Huerta v. Cnty. of Tulare*, No. 1:17-CV-01446-EPG, 2024 WL 307786, at *3 (E.D. Cal. Jan. 26, 2024) (finding a June trial date was not “imminent” in January of the same year).

While the request is opposed, Guardian has not demonstrated that reopening fact discovery for a short period and limited purpose would result in significant “additional costs and major alterations in trial tactics and strategy,” nor would such an extension meaningfully “delay[] the proceedings, especially the trial date.” *Morris v. Sutton*, No. 1:17-cv-01488-AWI (SAB), 2019 WL 2994291, at *5 (E.D. Cal. July 9, 2019). Therefore, Guardian has not credibly demonstrated that it would be prejudiced by the reopening of fact discovery for several weeks and other corresponding minor adjustments to the case schedule.

As to foreseeability, the Court evaluates each request in turn. First, the Court finds that it

¹⁰ Even had Guardian not agreed, the Court finds that GIS has been diligent as to seeking discovery from American Freight. *See* (Doc. 62, Ex. M, Black Decl. ¶ 12 (providing examples of multiple inquiries made by GIS of Guardian as to the status of this discovery)); (Doc. 62, Black Decl. ¶ 4 (detailing how Guardian did not produce what it had received from American Freight *on the day fact discovery closed and without metadata, Bates stamps, or identifying documentation*—because Guardian waited *six months* for American Freight to produce a single custody document)); (Doc. 62, Exs. A, B, Black Decl. ¶ 11 (describing how GIS responded Guardian's continued delay by drafting its own subpoena the day after the parties' August 24, 2024 meet and confer)).

1 was not foreseeable to GIS that it would need to subpoena records from RPM and OnPoint prior to
2 the close of discovery for the reasons discussed above. *See Morris v. Sutton*, No.
3 117CV01488AWISAB, 2019 WL 2089496, at *5 (E.D. Cal. May 13, 2019) (foreseeability may
4 follow from a court’s analysis of diligence); *Washington v. Essex*, No. 2:12-CV-03054-DAD-DB,
5 2022 WL 17417871, at *7 (E.D. Cal. Dec. 5, 2022) (same).

6 Second, the Court finds that it was foreseeable to GIS that GIS would be interested in
7 deposing Green. However, based on GIS’ experience with this witness in a related litigation—in
8 which Green was made available as a deponent and a trial witness by Guardian on several occasions
9 (Doc. 68 at 10)—the Court finds it was not foreseeable that Guardian would refuse to accept service.
10 *See Warren*, 2023 WL 5336816, at *14 (finding that reliance on the course of negotiation negated
11 the negative weight of the foreseeability factor); *cf. Soto v. Cnty. of Sacramento*, No. 2:19-CV-
12 00910-TLN-DB, 2021 WL 2402524, at *6 (E.D. Cal. June 11, 2021) (ruling for a plaintiff that had
13 argued that while it was not unforeseeable that plaintiff would need to retain an expert, but that it
14 was “unforeseeable that [the plaintiff] would be unable to compete [that] discovery due to [] disputes
15 over [an expert’s] representation”).¹¹

16 As to the last factor, contrary to Guardian’s argument, (Doc. 67 at 15–16, 21), GIS has
17 demonstrated that there is a reasonable likelihood that the limited and narrow fact discovery it seeks
18 will lead to evidence relevant to GIS’ claims and defenses—specifically relating to evidence
19 regarding the reason(s) for Guardian’s termination of GIS—as well as to GIS’ assessment of
20 damages—specifically the valuation of Guardian’s warranty business at the time of sale to OnPoint.

21 In sum, the balance of the factors weighs in favor of extending the fact discovery deadline

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¹¹ Because the Court has found the parties agreed to complete the timely-served discovery as to American Freight, it need not decide whether the need for that discovery was foreseeable. But even if there were no such an agreement, the Court would find GIS was entitled to complete discovery as, while it was foreseeable that more time was need to complete discovery related to American Freight (Doc. 62, Ex. C, Black Declaration ¶ 11), GIS justifiably relied on Guardian’s representations that it would not object to finishing previously served discovery. (Doc. 62, Ex. C, Black Declaration ¶¶ 14–15, Savage Decl. ¶¶ 3–5). Due to this justifiable reliance, it was not foreseeable to GIS that they would need to seek court intervention to complete discovery as to American Freight.

1 such that the Court shall grant the motion to modify the pretrial schedule to reopen fact discovery.

2 **B. Guardian Has Not Made a Showing of Good Cause Justifying a Refusal to Modify the**
3 **Protective Order.**

4 GIS contends that either paragraph 14 or 17 of the Protective Order (Doc. 38) permit
5 disclosure of the lists of allegedly missing registrations to American Freight (GUARDIAN 000001
6 and GUARDIAN 000002). (Doc. 62 at 19–21). Guardian disagrees, and while acknowledging the
7 underlying raw data in the two documents is derived from American Freight, contends that the
8 provision of those documents to American Freight “risks potential competitive harm” because they
9 are “internal to Guardian” and prepared “in a specific manner and format that Guardian has no
10 reason to believe would be known to any of its competitors.” (Doc. 67 at 21–22).

11 The Court is not convinced GUARDIAN 000001 and GUARDIAN 000002 fall into either
12 exception of the Protective Order because the documents themselves have never been provided to
13 American Freight and the information within the documents was obtained through the course the
14 parties’ present litigation.¹² As GIS asks, in the alternative, for a modification of the Protective
15 Order, the Court further considers whether a modification of the Protective Order is warranted.

16 When considering whether a modification might be appropriate, on the one hand, the Court
17 observes that Guardian has demonstrated a particularized harm consistent with the necessary
18 showing under Local Rule 141(c)(2), but only as to the disclosure of the proprietary “format” in
19 which the information is presented. Guardian has not demonstrated a particular harm as to the
20 limited disclosure to American Freight of the underlying information itself. (Doc. 67 at 22). Indeed,
21 Guardian cannot demonstrate harm associated with the disclosure of that underlying information, as
22 by their own admission, American Freight is already in possession of this information. (Doc. 62,
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26 ¹² Insofar as GIS seeks to disclose to American Freight correspondence on the face of which American Freight
27 employees are identified as authors or recipients, such disclosure is expressly provided for in the Stipulated Protective
28 order and any further “declaration” from this Court is unnecessary. (Doc. 38 ¶ 14). To the extent GIS seeks a declaration
as to documents other than GUARDIAN 000001, GUARDIAN 000002, and correspondence on the face of which
American Freight employees are identified as authors or recipients, such documents are not before this Court and
therefore the Court cannot make any declarations as to their status under the Protective Order.

1 Ex. T). On the other hand, the Court also observes that GIS' request for a modification of the
2 Protective Order that would allow GIS to disclose to American Freight information that American
3 Freight already possesses, is reasonable and in line with the spirit of the exceptions to confidentiality
4 provided for in the stipulated Protective Order. (Doc. 62 at 19–21; Doc. 68 at 7–8).

5 Therefore, the Court finds that it is appropriate to modify the Protective Order to allow GIS
6 to disclose the information in GUARDIAN 000001 and GUARDIAN 000002 for the limited
7 purpose of disclosure to American Freight based on the demonstrated need to effectuate efficient
8 discovery, without disclosing the proprietary formatting of GUARDIAN 000001 and GUARDIAN
9 000002. *Cf. Graves v. Whitmore*, No. 517CV01086JGBSPX, 2022 WL 17361976, at *5 (C.D. Cal.
10 Mar. 10, 2022) (“Where the court concludes the release of discovery material may result in
11 ‘particularized harm,’ and ‘the private interest in protecting the information outweighs the [need
12 for] disclosure,’ the court must then evaluate whether redacting the confidential information would
13 mitigate the harm and permit disclosure.” (citations omitted)).

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15 Because the Court finds that Guardian is in the best position to produce documents
16 mitigating their own concern about disclosure of their proprietary formatting, the Court shall order
17 Guardian to create two documents, to be labeled “GUARDIAN 000001-1” and “GUARDIAN
18 000002-1,” that are to contain all of the raw data contained in GUARDIAN 000001 and
19 GUARDIAN 000002 but that is not prepared in the same manner and format as Guardian’s internal
20 documents. Guardian is further ordered to produce those two documents to GIS for the purposes of
21 providing those two documents to American Freight to facilitate efficient discovery. The Court
22 emphasizes that Guardian is to ensure that the information included in GUARDIAN 000001-1 and
23 GUARDIAN 000002-1 does not omit, modify, or otherwise alter the underlying information other
24 than to redact any proprietary formatting. Any omissions, modifications, or alterations constituting
25 a material difference between the underlying information contained in GUARDIAN 000001 and
26 GUARDIAN 000002 and that contained in GUARDIAN 000001-1 and GUARDIAN 000002-1,

shall result in the imposition of sanctions.

V. CONCLUSION AND ORDER

Based on the foregoing, **IT IS HEREBY ORDERED:**

1. The deadline by which to complete the permitted fact discovery in this case is

EXTENDED to December 20, 2024 for the following purposes:

- a. Obtaining third-party discovery from OnPoint and/or RPM on Guardian and OnPoint's partnership in the furniture warranty business beginning in or around January 2021, and the sale of Guardian from RPM to OnPoint in or around January 2023;
- b. Serving a deposition subpoena on and taking the deposition of Johnny Green; and
- c. Completing all previously served fact discovery, including with respect to obtaining information from American Freight and raising any related disputes concerning that discovery to the Court per the parties' prior agreement.

2. The current case schedule (Doc. 61) is MODIFIED as follows:

Event	Continued Date
Non-Expert Discovery	December 20, 2024
Expert Disclosures	January 8, 2024
Rebuttal Expert Disclosures	January 22, 2025
Expert Discovery	February 5, 2025
Non-Dispositive Motion Filing	February 5, 2025
Non-Dispositive Motion Hearing	March 12, 2025
Dispositive Motion Filing	February 12, 2025
Dispositive Motion Hearing	March 19, 2025
Deadline to Request Settlement Conference	May 14, 2025
Pretrial Conference	June 18, 2025, at 2:30 p.m.
Trial	August 12, 2025, at 8:30 a.m.

3. Within **seven** days of the signing of this order,

- a. The parties shall meet and confer and file a stipulated modification to the Protective Order allowing the disclosure of GUARDIAN 000001-1 and GUARDIAN 000002-1 to American Freight, notwithstanding any confidentiality designation of GUARDIAN 000001 and GUARDIAN 000002 and subject to the parties' agreement as to any applicable compliance obligations to be imposed on American Freight. (*See, e.g.*, Doc. 38, Ex. A).
- b. Guardian shall produce two documents, labeled GUARDIAN 000001-1 and GUARDIAN 000002-1, which contain all of the information contained in GUARDIAN 000001 and GUARDIAN 000002 in a raw format, excluding Guardian's proprietary formatting, to GIS for the purposes of providing those two documents to American Freight to facilitate efficient discovery.

IT IS SO ORDERED.

Dated: **November 14, 2024**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE